

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ERNEST COOK,)	CASE NO.: 4:22-CV-00077-BYP
)	
Plaintiff,)	JUDGE BENITA Y. PEARSON
)	
vs.)	<u>DEFENDANT’S MOTION FOR ORDER</u>
)	<u>CLARIFYING THAT PLAINTIFF’S</u>
TRUMBULL COUNTY)	<u>MOTION FOR SANCTIONS LIES</u>
COMMISSIONERS)	<u>SOLELY AGAINST COMMISSIONER</u>
)	<u>NIKI FRENCHKO IN HER</u>
Defendant.)	<u>INDIVIDUAL CAPACITY</u>

Now comes Defendant Board of Trumbull County Commissioners (“Board”), by and through counsel, and hereby moves this Court for an order clarifying that Plaintiff’s Motion for Sanctions lies solely against Commissioner Niki Frenchko *in her individual capacity*.¹

On July 19, 2023, Plaintiff filed a Supplemental Submission Regarding Subject of Sanctions Motion [ECF No. 85]. In that submission, Plaintiff represented that he is seeking sanctions against Commissioner Niki Frenchko, individually *and in her official capacity*.

"An individual-capacity claim is distinct from a claim against a defendant in his official capacity. The former claim may attach personal liability to the government official, *whereas the latter may attach liability only to the governmental entity*." *Direct Constr. Servs., LLC v. City of Detroit*, 820 Fed. Appx. 417, 425-426 (citing *Kentucky v. Graham*, 473 U.S. 159, 165-67 (1985)) (internal citation omitted, italics added).

¹ The undersigned attempted unsuccessfully to resolve this matter with Plaintiff’s counsel before filing this motion.

The Board had no notice that it was at risk of sanctions because Plaintiff filed a notice before the hearing clarifying that the targets of her motion were “Ms. Niki Frenchko” and the undersigned’s law firm.² [ECF No. 70] Based on that representation, the undersigned participated in the hearing in defense of her *firm*. See ECF 73 (“This [exhibit/witness list] is filed with the understanding that Plaintiff has abandoned her request for sanctions against Commissioner Frenchko in her official capacity....”) Additionally, this matter was expressly raised and resolved at the July 14, 2023 hearing when the Court asked Plaintiff’s counsel whether she was seeking sanctions against the Board and Plaintiff’s counsel said no.

WHEREFORE, Defendant respectfully requests that the Court put this issue to rest and issue an order clarifying that Plaintiff’s motion for sanctions lies solely against Commissioner Frenchko *in her individual capacity*.

Respectfully submitted,

MEYERS, ROMAN, FRIEDBERG & LEWIS

/s/ Kathleen M. Minahan

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² The undersigned appreciates that Plaintiff dropped his claim for sanctions against her firm.

CERTIFICATE OF SERVICE

A copy of the foregoing Defendant's Motion for Order was served this 21st day of July 2023 on all counsel of record via the Court's electronic filing system.

MEYERS, ROMAN, FRIEDBERG & LEWIS

/s/ Kathleen M. Minahan

Kathleen M. Minahan